The CORPORATION JOURNAL

Trademark ®

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, CT Corporation System and associated companies deal with and act for lawyers exclusively.

Vol. 21, No. 7 AUGUST–SEPTEMBER 1955 Complete No. 398

Issuance of stock by a corporation, in return for recipient's entering the corporation's employ, held a violation of statute governing consideration for issue of stock. Page 127

•

Amendment of by-laws, by directors without stockholders' consent, postponing date of annual meeting, in effect extending directors' own terms of office, ruled unauthorized. *Page 126*

•

Published by The Corporation Trust Company and Associated Companies

MONTGOMERY-WARD

NILES-BEMENT-POND

MISSOURI PUBLIC SERVICE

TEXAS INTERNATIONAL SULPHUR

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD

Time and time again when there is a clash of opposing stockholder groups and the situation calls for an experienced, disinterested third party, it is CT that is chosen. CT has tallied the proxies in all of the above widely-publicized "battles" of 1955.

That means more experience for you to draw upon for your meetings of stockholders—with even more assurance that CT can be of *real* service to you.

The
CORPORATION JOURNAL

Trademark ®

AUGUST—SEPTEMBER 1955

Contents

Recent Decisions

When did you last look at the list of CT publications which are available without charge? You will find it on the inside back cover of this issue.

what constitutes doing business

Evaluation of Court Decisions

2. Qualification—Decisions of the State Courts

DOING BUSINESS DECISIONS of the Supreme Court of the United States concerned with the necessity of the qualification of foreign corporations have naturally furnished the criteria which are given the greatest credence by the State courts and by attorneys in the resolving of "doing business" questions.[1] However, decisions of this type rendered by the country's highest court have been few, when compared to the innumerable decisions rendered by State and local courts.

Perhaps the great bulk of State and local court decisions on the subject of the doing of business involve an application of the "interstate commerce clause" of the Federal Constitution to activities spanning State lines into a State in which a foreign corporation has not been authorized to do business. While principles laid down by the Supreme Court of the United States are reflected in the majority of these cases, there have been many instances where State courts have been faced with unusual situations in interstate commerce and where precedents in the form of opinions of the country's highest court have been lacking. Some of these decisions of the State courts have been concerned with interstate activities associated with conditional sales, chattel mortgages, real estate mortgages, financing, the submission of bids, the maintenance of a divisional sales office, leased departments, the leasing of machinery, the leasing of real property to and from others and the activities of non-profit companies in states other than those in which they are incorporated. The reported State decisions on such subjects have been applied in order to resolve "doing business" questions related to like situations before counsel and the courts of sister States, thus being evaluated as the best available precedents.

The definitions of what does and what does not constitute "doing business," enacted by State legislatures in recent years, stem from court opinions rendered in the various States in litigation related to the necessity of qualification. Delaware, Kansas, Maryland, Oklahoma, Pennsylvania, Tennessee, Texas and Wisconsin are states where such statutory definitions are to be found.

Decisions of the highest State courts have taken on greater authority in Federal court litigation concerned with diversity of citizenship in the period since 1938, when the Supreme Court, in *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, said: "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether

the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern." This rule was applied in 1949 in a "doing business" case involving qualification. *(Woods v. Interstate Realty Company,* 337 U. S. 535, 69 S. Ct. 535.)

[1] See "Qualification—Decisions of the Supreme Court," The Corporation Journal, August—September, 1954, page 3.

domestic corporations

DELAWARE

Court denies preliminary injunction to enjoin corporation from liquidating and making distribution to stockholders where amount to be paid to share holders appeared to be highest amount available.

Plaintiff stockholder sought a preliminary injunction enjoining defendant Delaware corporation from liquidating and making a cash distribution to its stockholders in the amount of $29 per share as a corollary to a proposed sale of its principal assets to a recently formed Delaware company. The plaintiff also sought to enjoin the consummation of the agreement of sale of assets.

The Court of Chancery, after an exhaustive examination of plaintiff's attack on a management proxy letter furnished to stockholders and of the circumstances surrounding the offer for the sale of the assets, concluded that defendant's stockholders were seasonably and adequately informed about the background, nature and consequences of the plan of sale and liquidation insofar as the part played by its directors, past and present, was concerned. It also found nothing in the pleadings, affidavits, depositions or other papers before it to sustain the charge that a better price than $29 could have been obtained or could be obtained in the foreseeable future. The court ruled that an order was to be entered dissolving a temporary restraining order, previously entered and denying plaintiff's motion for a preliminary injunction.

Gropper v. The North Central Texas Oil Company, Inc., Court of Chancery, New Castle County, May 13, 1955. Stewart Lynch of Hastings, Lynch & Taylor of Wilmington and Muccia & Muccia of New York City, for plaintiff. Aaron Finger of Richards, Layton & Finger of Wilmington and Winslow M. Lovejoy of Lovejoy, Morris, Wasson & Huppuch of New York City, for defendant. Commerce Clearing House Court Decisions No. 534825.

MARYLAND

Revision of corporation law in 1951, requiring transfer to charter within three years of by-law provisions calling for vote of a greater proportion than a majority of the stock, construed and applied, so as to render invalid actions taken by majority vote within the three-year period.

"The primary question to be determined in this case," said the Court of Appeals of Maryland, "is the meaning and effect of the provision in the 1951 revision of the corporation law that certain limitations and restrictions, permissible in the by-laws under the prior law, be transferred to the charter within three years from June 1, 1951, if they are to continue to be effective." When organized in 1945 as a close corporation, in substance an incorporated partnership, by three individuals holding proportionate ownership of two-fifths, two-fifths and one-fifth, the by-laws contained a provision that a quorum of the stockholders would be 85% of the outstanding stock, and that concurrence of the same percentage of the stock would be necessary to pass any motion or resolution, or to elect or remove a director, or to take any other action at any meeting of stockholders, or to amend or repeal the by-laws. The number of the directors was to be three, all being required to constitute a quorum, and the affirmative vote of all three was required to pass any motion or resolution or to take any action at any meeting of the board of directors. These provisions were adhered to until 1952. Meanwhile, one of the original directors had died and his two-fifths' interest was acquired by the director who had previously had but a one-fifth interest, increasing his interest to 60%.

In 1952, this director sought legal advice and was told that under the 1951 revision of the corporation law, a majority of the stock could act until such time as the by-laws requiring a greater proportion of stock for action, were put in the charter. Thereupon, at the annual meeting, this director relying upon the advice of his counsel, voted his 60% of the outstanding shares to elect a board of three directors, which did not include the director, who had held the balance of 40%. He also voted to delete from the by-laws each of the provisions requiring a vote of 85% of the stock and the requirement of concurrence of all three directors in actions of the board of directors. The ousted director, who was present at the meeting, protested vigorously that the actions were all contrary to the original agreement of the parties and of the by-laws, and were illegal and void. He then filed a bill of complaint against the corporation, the three directors and a trust company in which the corporate funds were deposited.

The lower court granted the ousted director substantial relief which he sought in having the action taken at the stockholders' and subsequent directors' meetings held void. This judgment was affirmed by the Maryland Court of Appeals. That court found that the language of the 1951 statute "is unambiguous and clear, and that provisions in by-laws requiring a greater proportion of the votes cast than a majority, if valid under the law as it stood prior to 1951, continue to be valid and effective

for a period of three years from June 1, 1951, if not transferred to the charter within that time, and would continue to be valid after the time they are transferred to the charter."

Roland Park Shopping Center, Inc. et al. v. Hendler, 109 A. 2d 753. Edward H. Burke and McKenny W. Egerton (Piper & Marbury and Bowie, Burke & Leonard, on the brief), of Baltimore, for appellants. Eugene M. Feinblatt (David P. Gordon, Nolan P. Chipman and Gordon & Feinblatt, on the brief), of Baltimore, for appellee.

NEW JERSEY

Amendment of by-laws, by directors without stockholders' consent, postponing date of annual meeting, in effect extending directors' own terms of office, set aside.

The directors of the defendant domestic corporation amended the corporation's by-laws to change the date of the annual meeting of stockholders from the first Wednesday after the first Monday in April in each year to the Wednesday after the second Monday in May in each year, without obtaining the consent of the stockholders. The plaintiffs sought to have the new meeting date set aside and the original date reestablished, among other relief. The question before the Superior Court of New Jersey, Chancery Division, was whether or not the directors could amend the by-laws so as to postpone the date of the annual meeting of stockholders, more particularly where this would result in extending the directors' own terms of office.

The court noted that "it is fundamental that the corporate structure must be established and managed in conformity with the provision of the Corporation Act. A by-law or an amendment to a by-law which is repugnant to any part of our Corporation Act is illegal and void." R. S. 14:7-1, N. J. S. A. provides that directors shall be chosen annually by the stockholders and shall hold office for one year. The court observed that the attempted change of by-laws disregarded the requirement for annual elections. It held that a statutory provision for annual election of directors was a mandate which must be strictly obeyed and that the directors had no power to change that mandate nor to extend their own terms of office by postponing the date of the annual meeting of stockholders. The plaintiffs were granted the relief sought.

Penn-Texas Corporation et al. v. Niles-Bement-Pond Company, 112 A. 2d 302. Riker, Emery & Danzig (Charles Danzig, appearing), of Newark, for plaintiffs. Stryker, Tams & Horner (Josiah Stryker, appearing), of Newark, for defendant Niles-Bement-Pond Co. Crummy, Consodine & Gibbons (Andrew B. Crummy, appearing) of Newark, for intervenors.

NEW YORK

Security under Sec. 61-b, G.C.L., denied in action to enjoin proposed recapitalization where action was not brought in the right of the corporation, but was merely a contest between two classes of stock.

The plaintiff, a holder of less than 5% of the outstanding shares of Class A stock of the defendant corporation, brought an action to enjoin a proposed recapitalization of the defendant. The corporation moved to require that the plaintiff give security pursuant to Section 61-b of the General Corporation Law to cover its reasonable expenses in the action. The Supreme Court, New York County, noted that this posed the question whether the action by the plaintiff was brought derivatively in the right of the corporation as contemplated by Sec. 61-b, or whether it was representative, solely on behalf of the plaintiff and other stockholders similarly situated.

A review of the facts led the court to remark that "the plaintiff here complains of no wrong to the corporation. Simply stated, he says that the recapitalization unfairly benefits the Class B stock at the expense of the Class A stock which he owns. In essence, we have a contest between two classes of stock." The court ruled that the corporation was not entitled to security and denied its motion.

Lehrman v. Godchaux Sugars, Inc., 138 N. Y. S. 2d 163. John B. Doyle, of New York City, for plaintiff. Ehrich, Stock, Leighton & Holland, John J. Leighton, Albert D. Jordan, Michael L. Matar, of counsel, of New York City, for defendant.

Issuance of its stock by a corporation, in return for recipient's entering the corporation's employ, held a violation of Sec. 69, SCL.

In *Brown v. Watson*, 124 N. Y. S. 2d 504, (The Corporation Journal, December 1953—January 1954, page 288), the New York Supreme Court, Special Term, Part V, held that stock issued by a newly formed service corporation to an employee who left a lucrative position, was supported by consideration which consisted of knowledge and good will as property within the meaning of Section 69 of the Stock Corporation Law.

Upon appeal, the Appellate Division, First Department, has taken a different view on this question, remarking: "The issuance of the stock of the corporation in return for entering the corporation's employ was a violation of Section 69, Stock Corporation Law." The court also observed: "While it may be said that special knowledge experience and contacts in a particular field is something of value, nevertheless it may not be considered as 'property' within the meaning of Section 69. To broaden the section so as to include peculiar knowledge and experience as valid consideration for the issuance of stock would undermine present law and require appropriate legislative action. By issuing the stock of the corporation without valid consideration the directors committed a wrong for which they must be held responsible to the extent of the par value of the stock issued."

Brown, as trustee, etc. v. Watson et al., 139 N. Y. S. 2d 628. Benjamin Brownstein, of counsel (Harold Young with

him on the brief; Siegel & Brownstein, attorneys), of New York City, for plaintiff-appellant. Cyril D. Wagner, of New York City, for defendant-respondent Watson. Sidney G. Madenberg, of New York City, for defendant-respondent Lang.

foreign corporations

ALABAMA

Service of process on state official as agent of unlicensed foreign corporation, upheld.

Service of process upon defendant foreign corporation, not licensed as such in Alabama, was had by serving the Secretary of State under Section 193, Title 7, Alabama Code of 1940, as amended. This section provides for service upon the Secretary of State with reference to causes of action arising out of or as consequence of acts or business done in the state by an unqualified foreign corporation.

The United States District Court, N. D. Alabama S. D., denied a motion to dismiss the complaint, finding defendant's activities in Alabama to have been "neither irregular nor casual but were systematic and continuous through the years in question." A large volume of business for the defendant resulted from the efforts of its agents. They undertook to increase the sale of defendant's product made by its local purchasers to their customers. This was effected through sales meetings, schools, demonstration of sales techniques in the field, on truck and in stores; through motion pictures, advertising, door-to-door sales and other methods. In upholding the service, the court indicated that the constitutionality of the statute under which it was made was not in doubt.

Orange-Crush Grapico Bottling Company v. The Seven-Up Company, 128 F. Suppl. 174. Cabaniss & Johnston of Birmingham, for plaintiff. Spain, Gillon & Young of Birmingham, for defendant.

IOWA

Unlicensed foreign corporation, carrying on activities consuming five to six weeks, ruled doing business so as to be subject to service of process by service upon state official as its agent, under statute.

The United States District Court for the Southern District of Iowa had dismissed plaintiff's complaint for want of jurisdiction. Defendant Missouri corporation, not licensed in Iowa, had been served through process effected on the

Secretary of State as its agent in the manner directed by section 494.2(6), Iowa Code Annotated. Defendant contended it had not transacted business in Iowa so as to be subject to service of process.

The judgment dismissing the complaint was reversed by the United States Court of Appeals, Eighth Circuit, upon reviewing the evidence. This disclosed that, over a period of five years, defendant had entered Iowa to carry out three pieces of work, including one in question, that it had moved heavy machinery into the state and sent in foremen, that it had employed labor and purchased materials in Iowa. The time consumed to do the work was about five and one-half weeks. The court concluded that the defendant was doing business in Iowa so as to be subject to process. It was also ruled that although defendant was not served until nine months after its activities in the state had ceased, it was nevertheless subject to process in a cause of action which arose out of business carried on by it in the state.

Electrical Equipment Company, Inc. v. Hamm, 217 F. 2d 656. Walter A. Newport, Jr., (Wayne G. Cook, John E. Nagle and Cook, Blair & Balluff, on the brief), of Davenport, Iowa, for appellant. J. Francis Phelan of Fort Madison, Iowa, (Ernest E. Baker, L. A. Robertson of St. Louis, Mo., Johnson & Phelan of Fort Madison, Iowa, and Alexander & Robertson of St. Louis, Mo., on the brief), for appellee.

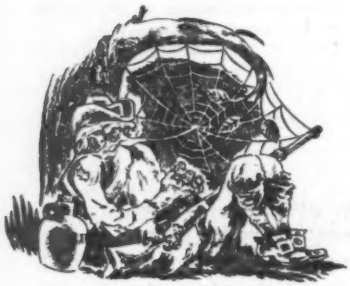
MANITOBA

Unlicensed foreign corporation, suing on contract made in part in Manitoba, although it would otherwise be precluded from bringing suit, held to have right to preserve action until licensed, where defendant made no answer to plaintiff's claim.

An unlicensed United States company brought an action against the defendants on promissory notes issued by the latter as payment for coal sold and delivered to them by the plaintiff company. The Manitoba Court of Queen's Bench noted that the transaction leading to the contract between the parties was effected either through correspondence or by orders obtained by the plaintiff's representative when actually present in Winnipeg, and observed that "it must be recognized that the contract between the parties, so far as it was effected through offer and acceptance, was made at least partly in Manitoba. This shows that the present action is in respect of a contract made in whole or in part in the province in the course of, or in connection with, business carried on therein. Not having taken out a license, the plaintiff is precluded from bringing this action. In view of the fact, however, that the defendant has no answer to the claim, it is only fair to enable the plaintiff to make use of the right provided by the subsection (3) of section 447 of the Companies Act, namely, that its right to the action be preserved until it has obtained a license."

Hickman, Williams & Company v. J. L. Kerr & Sons Limited, (1954) 13 WWR (NS) 634; (1955) 1 D. L. R. 735.

BELIEVE IN THEM ?



A corporation's statutory agent must be kept *in the state* and *at the registered address.* A statutory agent who is not at the spot his legal designation says he is, is no agent at all – and a corporation doing business in a state without a statutory agent is leaving all its doors and windows open to whatever corporate trouble may be flying about.

As one lawyer expressed it to his client, "To rely upon less-than-complete protection is to believe in fairy tales."

The more careful the lawyer, the more insistent he is that his clients have CT representation wherever qualified–so his client will always have a statutory agent in the state, and always have him at the legally designated address.

MASSACHUSETTS

Service, upon unqualified foreign corporation, by serving state official as statutory agent, quashed even though the corporation solicited sales and installed machinery in Massachusetts.

In an action for an accounting of sums due to the plaintiff, a Massachusetts corporation, from the defendant, an unqualified Georgia corporation, under a contract granting the defendant the exclusive right to manufacture and sell a machine developed by the plaintiff, service of process was made upon the Commissioner of Corporations. The defendant moved to quash the service and to dismiss the action.

The defendant did all its manufacturing in Georgia, where its office, books and records were located and where its stockholders and directors met. It had no office or place of business in Massachusetts, owned no property or bank account there. It had a salesman, residing in New York, who solicited orders in New England and the Maritime Provinces, which were subject to approval or rejection in Georgia. He had no authority to bind the defendant in any way. The defendant sold machinery in Massachusetts on the basis that it be installed by the purchaser. However, at the request of the purchaser, the defendant would send an employee to supervise the installation. When a machine had to be adapted to a particular plant, an employee of the defendant went to Massachusetts to inspect the premises, but the planning and making of the adaptations were performed outside Massachusetts. The only employee of the defendant residing in the state was a mechanic serving a large territory which included Massachusetts.

The United States District Court for Massachusetts granted the motion to quash the service and to dismiss the action. The court remarked: "Whether or not the activities of defendant's employees within the state in soliciting sales or installing or servicing machinery are sufficient to constitute doing business in Massachusetts, they had no connection with the licensing contract and the present action cannot be said in any way to arise out of them." The court ruled that service could not have been effected under the method provided by Massachusetts law.

Boston Packaging Machinery Company, Inc. v. Woodman Company, Inc.,* 125 F. Supp. 567. James C. Henes of Boston, for plaintiff. Robert B. Luick, Alfred Thomas, Sullivan & Worcester, of Boston, for defendant.

---

* The full text of this opinion is printed in the **State Tax Reporter,** Massachusetts, page 10,043.

NEW YORK

Mere local receipt and payment of corporate bills through a local bank ruled not to subject corporation to service of process.

Service of process on defendant unlicensed New Jersey corporation, which it sought to have vacated, was made at the residence of its alleged president. For the purpose of establishing that the defendant was doing business in New

York, plaintiffs alleged that the business of the corporation had been transacted from the home of one of the individual defendants, to whom all corporate bills were rendered and paid by the New York depository of the corporate defendant. "These facts," observed the New York Supreme Court, Special Term, Kings County, Part I, "are clearly insufficient to sustain the court's jurisdiction. Only where a corporation has manifested its presence in this state by conducting systematic business may the service be sustainable."

In this case, the defendant had its principal office in New Jersey, where its business was the ownership, maintenance and operation of an apartment house located in that state. The building was run by a superintendent and the management was in the hands of a real estate agent located in New Jersey. It had no office in New York.

Feingold et al. v. Ellman et al., 138, N. Y. S. 2d 192. Siegel & Field of New York City, for plaintiffs, for the motion. Rosling & Eisenberg of Brooklyn, for defendant Aron Ellman, in opposition to the motion for an injunction. Rosling & Eisenberg of Brooklyn, appearing specially for Ormond Realty Corp., in support of cross-motion to vacate service of summons and complaint as against Ormond Realty Corp.

Change of venue in New York Federal court action to Minnesota Federal court granted where defendant corporation's relationship with its outlets there was continuous and regular and to be regarded as the doing of business in that state.

The plaintiff in a suit in a New York federal court, first having unsuccessfully attempted to serve the defendant in Minnesota, moved to change the venue of an action from New York to Minnesota, where she resided. The defendant corporation's sole contention was that it was not doing business in Minnesota and that, therefore, the action could not have been brought there. The defendant's products in Minnesota were regularly sold there by independent wholesalers or retailers. It maintained "consultants" regularly traveling through the state "advising" as to the proper use of its products. These consultants referred orders for defendant's products to the local wholesaler or jobber. Defendant had no office or property in Minnesota except accounts receivable. The United States District Court for the Southern District of New York, granted the plaintiff's motion to change the venue to Minnesota, regarding the defendant as doing business in Minnesota. The court emphasized that the defendant's relationship with its Minnesota outlets of its products was not short-lived but was continuous and regular.

Dufek v. Roux Distributing Company, 125 F. Supp. 716. Amos S. Basel, of New York City, for plaintiff. Hampton & Mahoney, of New York City, for defendant.

NORTH CAROLINA

Service upon unqualified corporation, made on agent of wholly owned subsidiary, quashed by Federal Court.

The plaintiff, a resident of North Carolina, sought to recover damages against the defendant, an Illinois corporation not licensed to do business in the state. Summons was served on the North Carolina process agent of the defendant's wholly owned sales subsidiary, a Missouri corporation. The defendant moved to dismiss the action for lack of jurisdiction or to quash the service on the ground that it was not doing business in North Carolina and that its subsidiary was not its agent for service of process.

The facts disclosed that the defendant parent corporation owned and voted all the stock of the subsidiary and elected its directors, a majority of whom were directors or officers of the defendant. Four of the subsidiary's nine officers were officers or directors of the parent. The parent completely controlled and directed the policies and business of the subsidiary. The subsidiary, though mostly buying the parent's products, also bought from other firms. It maintained separate personnel and separate books and accounts.

The United States District Court, E. D. North Carolina, Wilson Division, quoted from *Cannon Manufacturing Co. v. Cudahy Packing Co.*, 267 U. S. 333, 45 S. Ct. 250, involving almost identical facts, as follows: "Congress has not provided that a corporation of one state shall be amenable to suit in the federal court for another state in which the plaintiff resides, whenever it employs a subsidiary corporation as the instrumentality for doing business therein." The court dismissed the suit for lack of jurisdiction and quashed the service.

Harris v. Deere & Company, 128 F. Supp. 799. W. L. Thorp & W. L. Thorp, Jr., of Rocky Mount, and Chauncey H. Leggett, of Tarboro, for plaintiff. Hugh M. Dorsey, Jr., of Atlanta, Ga., and Robert C. Howison, of Raleigh, for defendant.

taxation

GEORGIA

Foreign corporation, not doing business in state, but receiving income, through out-of-state drafts, for rentals on its refrigerator cars brought into Georgia by lessee railroads, held not subject to income tax.

The defendant foreign corporation was engaged in the business of leasing refrigerator railroad cars to railroads at a fixed amount for each mile that the car rolled, whether loaded or empty. At times, these cars were routed into

Georgia, matters of routing being controlled entirely by the lessee railroads. The corporation had no office, warehouse, or other place of business in Georgia and it had no employees engaged in any activities within the state. The state sought to collect income taxes from the defendant for the years 1931 through 1949. The trial court ruled in favor of the defendant, dismissing the levy, whereupon the state appealed.

At the outset, the Court of Appeals of Georgia ruled that the defendant was not doing business in the state, and remarked: "The only question here presented is whether or not a foreign corporation, not doing business in Georgia, but receiving income through drafts drawn at the St. Louis, Missouri, office for contractual rentals on its refrigerator cars which at times were brought into Georgia by lessee railroads and delivered to shippers for loading and thereafter transported in interstate commerce, is subject to the income tax here sought to be collected."

The court examined the statute imposing the income tax and amendments thereto. Affirming the judgment below, the court held that since the defendant derived no income outside of its business of leasing or renting refrigerator cars, and had no "business income" in the state, and was not doing business in the state, it was not subject to the income tax.

Williams v. American Refrigerator Transit Co.,* 86 S. E. 2d 336. Eugene Cook, Atty. Gen., William L Norton, Jr., Asst. Atty. Gen., for plaintiff in error. Troutman, Sams, Schroder & Lockerman, of Atlanta, for defendant in error.

* The full text of this opinion is printed in the **State Tax Reporter**, Georgia, page 10,040.

MICHIGAN

Sales of tangible personal property to a national bank held subject to retail sales tax imposed on retailers for privilege of transacting business in state.

Suit was instituted in order to obtain a declaratory decree determining, among other things, whether or not sales by Michigan retailers of furniture, office equipment and other tangible personal property to a national bank, necessary to the conduct of its business, were subject to the payment of the state sales tax imposed on retailers for the privilege of transacting business in the state. The Supreme Court of Michigan, on this question, emphasized that the legal incidence of the Michigan sales tax does not fall on the purchaser of merchandise but rather on the retailer. Therefore, "the purchaser, in legal contemplation, is not the taxpayer even though the economic burden may be shifted to him."

National Bank of Detroit v. Department of Revenue of the State of Michigan,* 340 Mich. 573, 66 N. W. 2d 237. Dickinson, Wright, Davis, McKean & Cudlip of Detroit, for plaintiff and appellant. Frank G. Millard, Atty. General, Edmund E. Shepherd, Sol. Gen., of Lansing; T. Carl Holbrook and William D. Dexter, Assts. Atty. Gen., for defendant-appellee. *(Appeal filed in the Supreme Court of the United States, February 26, 1955; Docket No. 623. Motion to dismiss granted and appeal dismissed, May 23, 1955.)* (See page 138.)

* The full text of this opinion is printed in the **State Tax Reporter**, Michigan, page 10,292.

WISCONSIN

Domestic corporation operating a unitary business, with one plant in Iowa and one in Wisconsin, permitted to report income according to statutory apportionment method.

The plaintiff domestic corporation, manufacturing viscose bands and caps for bottles, operated two plants, one in Iowa and one in Wisconsin. The Iowa plant, which commenced production in 1949, produced tubing which was shipped to the Wisconsin plant for printing, cutting, packing and shipping to buyers. The company reported its income for the fiscal years ending June 30, 1947 and June 30, 1948 by a separate accounting method. For the fiscal year ending June 30, 1949, income was reported according to the apportionment method provided by section 71.07(2), Stats. After an audit the state assessed additional taxes for those years. When the plaintiff's applications for abatement of additional taxes were denied, an appeal was taken to the Supreme Court of Wisconsin.

At the outset, the court noted that the items for the years 1947 and 1948 had been adjusted and that the sole question presented on appeal was as to the method of accounting to be employed in determining the Wisconsin income for the plaintiff for the fiscal year ending June 30, 1949.

After an examination of the history of the statute, the court remarked that the law required that the apportionment method of accounting be used by a company engaged in business within and without the state when the business of such company within the state was an integral part of a unitary business. In addition, it was observed that there was nothing in the statute which permitted the state to compel a reporting of the plaintiff's income on a separate accounting basis. The court ruled that the business of the plaintiff was clearly a unitary business, as the component parts thereof were too closely connected and necessary to each other to justify a division. The judgment of the lower court denying abatement of the additional assessment was reversed.

The Celon Co. v. Wisconsin Department of Taxation,* 69 N. W. 2d 453, Rieser, Mathys, McNamara & Stafford, of Madison, for appellant. Vernon W. Thomson, Atty. Gen., Harold H. Persons, Asst. Atty. Gen., for respondent.

* The full text of this opinion is printed in the **State Tax Reporter**, Wisconsin, page 11,387.

state legislation

Connecticut — Public Act No. 36 provides that all stockholders are to have preemptive rights, unless the charter expressly provides otherwise or the right is released by a two-thirds vote of the shares entitled to such rights. Unless otherwise expressly provided in the charter, the provision for preemptive rights does not apply under the following circumstances: (1) to the holders of preferred stock unless the new stock is of the same class or another class having preference as to assets or dividends over such preferred stock; (2) to stock issued due to the exercise of warrants or conversion rights if the warrants or conversion rights were subject to preemptive rights when issued or if the preemptive right was released as provided above at the time of issuance; (3) to stock issued to an employe under an option or other agreement between the corporation and the employe; (4) to treasury stock; (5) to stock issued in connection with a merger, consolidation or proceeding under the federal bankruptcy act. Previously, there had been no statutory provision concerning preemptive rights.

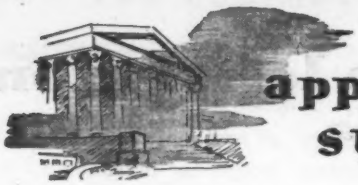
Maine — House Bill 272 provides that the Secretary of State is deemed to be the process agent of a foreign corporation which does intrastate business in the state without previously having appointed a statutory agent. Service of process upon the Secretary of State may be made in any suit against the corporation arising as a result of the doing of business by it in the state.

Chapter 284 provides for circumstances under which a corporation may issue rights or options entitling the holders to purchase shares of the corporation's stock, upon such conditions as the stockholders, or directors acting under authority granted by the stockholders, may prescribe.

Nevada — Chapter 288 outlines a number of activities which may be carried on in the state by a foreign corporation without qualifying to do business. These activities involve the loaning of money, secured by mortgages, deeds or deeds of trust on Nevada real estate and transactions collateral thereto, such as maintaining suits and bank accounts, servicing such loans and acquiring title under foreclosure sale. Such a corporation is deemed to have appointed the Secretary of State as its process agent. It is required to file a list of officers and directors on or before June 30 of each year and to pay a fee of $50.

Tennessee — Chapter 185 makes liable to the excise tax every taxable entity "now or hereafter doing business within this state, without domesticating or qualifying to do business in this state, or while its charter is forfeited, revoked or suspended," as a recompense for the protection of its local activities and as a compensation for the benefits it receives from doing business in Tennessee.

Unlicensed foreign corporations, doing business in Tennessee are deemed, under Chapter 237, Public Acts 1955, to have appointed the Secretary of State as statutory agent for the service of process with respect to suits brought against them arising out of such unauthorized business done in the state.



appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

MICHIGAN. Docket No. 623. *National Bank of Detroit v. Department of Revenue of the State of Michigan,* 66 N. W. 2d 237. (The Corporation Journal, August—September, 1955, page 135.) State sales tax—taxability of sales to a National bank. **Appeal filed, February 26, 1955. May 23, 1955:** *"Per curiam:* The motion to dismiss is granted and the appeal is dismissed." (75 S. Ct. 781.)

NEW JERSEY. Docket No. 777. *Werner Machine Co. v. Director, Division of Taxation,* 107 A. 2d 36, affirmed 110 A. 2d 89. (The Corporation Journal, December 1954—January 1955, page 55.) Franchise tax—inclusion of Federal tax-exempt bonds in basis. **Appeal filed, May 9, 1955.**

PENNSYLVANIA. Docket No. 701. *Commonwealth v. Budd Co.,* 108 A. 2d 563. (The Corporation Journal, February—March, 1955, page 74.) Income tax—deduction of net operating carry-back losses—resettlement—act barring deduction. **Appeal filed, April 4, 1955. May 23, 1955:** *"Per curiam:* Motion to dismiss granted and appeal dismissed for failure to present properly a Federal question. As to questions not subject to review by appeal the papers whereon the appeal was taken are treated as a petition for a writ of certiorari and certiorari is denied for the reason that the judgments rest on adequate state grounds." (75 S. Ct. 782.)

---

* Data compiled from **CCH U. S. Supreme Court Bulletin,** 1954-1955.

regulations and rulings

Arizona — If it can be shown that the legal incidence of a sales tax is on the vendor, and if the vendor regularly charges the tax as additional to its sales, then the federal government is obligated to pay the tax. (Opinion of the Comptroller General of the United States to the Bureau of Reclamation, Department of the Interior, State Tax Reporter, Arizona, ¶ 65-003.)

Common and contract carriers are taxed under the motor carrier laws. Since an exemption is clearly granted to them under the sales tax law in view of the first form of taxation, the 2% sales tax is not collectible on the carriers. (Opinion of the Attorney General, State Tax Reporter, Arizona, ¶ 65-001.)

An out-of-state motor vehicle dealer bringing used automobiles into the state to be sold at auction must be registered as a used motor vehicle dealer. (Opinion of the Attorney General to the Superintendent of the Division of Motor Vehicles, State Tax Reporter, Arizona, ¶ 34-006.)

Arkansas — Gross receipts tax returns must be in the hands of the Commissioner of Revenues by the due date in order to escape penalty; therefore, deposit in the mail does not constitute delivery. (Opinion of the Attorney General, State Tax Reporter, Arkansas, ¶ 61-601.)

Colorado — Severed oil and gas interests are real property and as such are assessable under state law. It is the duty of the county assessor to separately assess such severed mineral rights regardless of whether or not a request for assessment is made. (Opinion of the Attorney General to the District Attorney, Las Animas, State Tax Reporter, Colorado, ¶ 24-026.)

Georgia — A dairy cooperative is subject to an annual license fee of $10.00, but is exempt from franchise and license taxes. (Opinion of the Attorney General, State Tax Reporter, Georgia, ¶ 5-201.)

Production credit associations are exempt from the franchise tax. (Opinion of the Attorney General, State Tax Reporter, Georgia, ¶ 200-037.)

Indiana — Transactions in intangibles should not be treated as taxable if the sale is in interstate commerce without regard to whether any document evidencing the transaction moves across state lines or not. (Ruling, Gross Income Tax Division, State Tax Reporter, Indiana, ¶ 15-087.)

Receipts from the licensing or leasing of films from an out-of-state business situs to Indiana distributors are not taxable. Leases or rentals from an Indiana situs or conducted through an Indiana office are taxable. (Ruling, Gross Income Tax Division, State Tax Reporter, Indiana, ¶ 15-086.)

New York — A certificate of incorporation of a proposed membership corporation which recites a purpose of a business nature should not be accepted for filing by the Secretary of State. (Opinion of the Attorney General to the Secretary of State, New York Corporation Law Reporter, ¶ 11,062.)

some important matters

For August and September

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Arizona — Annual Report and Fee due on or before September 30.—Domestic and Foreign Corporations.

Arkansas — Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.

California — Franchise Tax based on net income. Second Installment due on or before September 15.—Domestic and Foreign Corporations.

Connecticut — Annual Report due on or before August 15 (if corporation was organized or qualified between July 1 and December 31 of any previous year).—Domestic and Foreign Corporations.

Idaho — Annual Statement and Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

Kentucky — Report of Unclaimed Dividends, etc., due on or before September 1.—Domestic and Foreign Corporations.

Louisiana — Franchise Tax Report and Tax due on or before October 1.—Domestic and Foreign Corporations.

Maine — Annual Franchise Tax due September 1; delinquent one month later.—Domestic Corporations.

Oklahoma — Annual Franchise Tax Report and Tax due on or before August 31.—Domestic and Foreign Corporations.

Oregon — Annual License Fee due August 15.—Domestic Corporations.
Annual License Fee due August 15.—Foreign Corporations.
Report of Abandoned Property due on or before September 1.—Domestic and Foreign Corporations.

Quebec — Annual Return to Provincial Secretary due on or before September 1.—Domestic and Foreign Corporations.

Wisconsin — Second Installment of Income Tax due on or before August 1.—Domestic and Foreign Corporations.

Supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Corporate Tightrope Walking. A look at recent developments which affect corporations carrying on business in interstate commerce.

Agent for Process. Case histories of corporation officials who suddenly found out that trouble can take funny bounces when statutory representation is entrusted to a business employee.

A Pretty Penny . . . Gone! The troubles that descend upon a corporation—as shown by actual court cases—if its agent cannot be found when service of process is attempted.

Before and After Qualification. A complete list of aids and services—including those supplied without charge—which CT furnishes for lawyers working on foreign corporation matters.

Corporate Confusion. A discussion of the wriggling, twisting, seemingly opposite court decisions which make building a pattern for out-of-state operations by a corporation a risky business these days.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of getting lawyer's advice before contracting for work outside home state, even for federal government.

More Sales with Spot Stocks. Advantages found by many manufacturers in carrying spot stocks at strategic shipping points—and preliminary statutory measures necessary to protect corporate status.

When a Corporation Is P. W. O. L. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

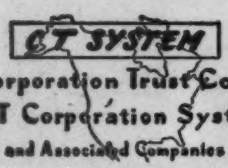
What Constitutes Doing Business (1951 Edition). A 192-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

THE CORPORATION TRUST COMPANY
120 Broadway, New York 5, N. Y.

Form 3547 requested

The CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company bi-monthly, February, April, June, August, October and December. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.



The Corporation Trust Company
C T Corporation System
and Associated Companies

Albany 10 . . . 4 S. Hawk Street	Jersey City 2 . 15 Exchange Place
Atlanta 3 . . . Healey Building	Los Angeles 13 . 510 S. Spring Street
Baltimore 2 . . . 10 Light Street	Minneapolis 1 . Midland Bank Bldg.
Boston 9 . . 10 Post Office Square	New York 5 . . . 120 Broadway
Buffalo 3 . Ellicott Square Building	Philadelphia 9 . 123 So. Broad St.
Chicago 4 . 208 S. La Salle Street	Pittsburgh 22 . . Oliver Building
Cincinnati 2 . . . Carew Tower	Portland, Me. 3 . 57 Exchange Street
Cleveland 14 . Union Commerce Bldg.	San Francisco 4 . . Mills Building
Dallas 1 . Republic Natl. Bank Bldg.	Seattle 4 . . 1000 Second Avenue
Detroit 26 . . . . Dime Building	St. Louis 2 . 314 North Broadway
Dover, Del. . . 30 Dover Green	Washington 4 . . Munsey Building
Houston 2 . . . 608 Fannin St.	Wilmington 99 . 100 West 10th Street